

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zim Sessoms	Team: Squad #16	CCRB Case #: 202206638	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/02/2022 9:20 PM	Location of Incident: Q Train at 14th Street-Union Square station	18 Mo. SOL 4/2/2024	Precinct: 13
Date/Time CV Reported Mon, 10/03/2022 4:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 10/03/2022 4:57 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Dennis Hoe	03915	949106	TB SSTF
2. PO Max Cheung	19707	958401	TB SSTF

Officer(s)	Allegation	Investigator Recommendation
A. PO Dennis Hoe	Abuse: Police Officer Dennis Hoe stopped § 87(2)(b)	
B. PO Max Cheung	Abuse: Police Officer Max Cheung stopped § 87(2)(b)	
C. PO Dennis Hoe	Force: Police Officer Dennis Hoe used physical force against § 87(2)(b)	
D. PO Dennis Hoe	Abuse: Police Officer Dennis Hoe threatened § 87(2)(b) with the use of force.	
E. PO Max Cheung	Abuse: Police Officer Max Cheung threatened § 87(2)(b) with the use of force.	
F. PO Max Cheung	Force: Police Officer Max Cheung used physical force against § 87(2)(b)	
G. PO Max Cheung	Abuse: Police Officer Max Cheung stopped § 87(2)(b)	
H. PO Dennis Hoe	Abuse: Police Officer Dennis Hoe issued an unlawful summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On October 3, 2022, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System (BR 01).

On October 2, 2022, at approximately 9:20 PM, § 87(2)(b) was sitting in a Q train at the 14th Street-Union Square Station in Manhattan when he observed Police Officers Dennis Hoe and Max Cheung of the Transit Bureau Subway Safety Taskforce approach another individual on the train, identified by the investigation as § 87(2)(b) who was playing music on his phone. After a brief interaction with § 87(2)(b) POs Hoe and Cheung informed § 87(2)(b) that he needed to get off the train (**Allegation (A, B) Abuse of Authority: Stop,** § 87(2)(g)). While escorting § 87(2)(b) out of the train, PO Hoe allegedly pushed § 87(2)(b) (**Allegation (C) Force,** § 87(2)(g)). As § 87(2)(b) stood on the station platform, POs Cheung and Hoe withdrew their tasers and pointed them at § 87(2)(b) (**Allegation (D, E) Abuse of Authority,** § 87(2)(g)). Another individual who had been on the train, identified by the investigation as § 87(2)(b) approached PO Cheung from behind. PO Cheung turned around and pushed § 87(2)(b) to the ground (**Allegation (F) Force,** § 87(2)(g)). After PO Hoe placed § 87(2)(b) in handcuffs, PO Cheung grabbed § 87(2)(b) and took her upstairs to the Transit District 4 stationhouse (**Allegation (G) Abuse of Authority: Stop,** § 87(2)(g)). § 87(2)(b) was charged with Criminal Possession of a Weapon and an MTA Violation while § 87(2)(b) was released with a summons for Disorderly Conduct (**Allegation (H) Abuse of Authority: Unlawful Summons,** § 87(2)(g)).

Body-worn Camera (BWC) footage, with the faces of § 87(2)(b) and § 87(2)(b) redacted by the NYPD due to the fact that the investigation was unable to obtain waivers from them, was obtained from the BWCs of POs Hoe and Cheung (BR 11,12,13,14,18). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) provided the investigation with cell phone footage of the incident (BR 03 and 04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Dennis Hoe stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Max Cheung stopped § 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB on November 3, 2022 (BR 02). PO Hoe was interviewed by the CCRB on January 11, 2023 (BR 08). PO Cheung was interviewed by the CCRB on January 12, 2023 (BR 09). § 87(2)(b) and § 87(2)(b) did not respond to attempts to contact them and obtain statements from them.

§ 87(2)(b) (BR 02) stated that as he was sitting on the Q train when § 87(2)(b) arrived on the train and stood six to seven feet away from him. § 87(2)(b) then began to play music quietly on his phone, holding it up to his ear. POs Hoe and Cheung then walked to § 87(2)(b) from the opposite side of the train car and asked if that was his music playing. After § 87(2)(b) replied that it was indeed his music, the officers told him to get off the train. § 87(2)(b) asked the officers what he had done, but the officers did not answer and told him that he needed to get off the train.

§ 87(2)(b) arrest related to this incident is sealed (BR 07) and the investigation was unable to get in touch with him to obtain an unsealing order. However, the entry in the Transit District 4

Command Log for § 87(2)(b) arrest (BR 10) states that he was charged with an MTA Violation and Criminal Possession of a Weapon. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Cheung (BR 09) stated that he was on the Q train with PO Hoe when he heard § 87(2)(b) playing music loudly on what he believed was a speaker (though PO Cheung could not recall what the speaker looked like) from the opposite end of the train car. PO Cheung then approached § 87(2)(b) and asked if he could shut his music off and then told him he wanted to see his identification. § 87(2)(b) told PO Cheung that he did not have to give him his identification, to which PO Cheung responded that he was required to as he was committing an MTA violation. PO Cheung then asked § 87(2)(b) to get off the train as it stopped at Union Square station. After PO Hoe placed § 87(2)(b) in handcuffs, he was brought back to the stationhouse upstairs due to his failure to provide identification as required to summons him for the unreasonable noise MTA violation. § 87(2)(b) was charged with criminal possession of a weapon (after PO Hoe found a dagger in his right pocket while frisking him at the stationhouse) and the unreasonable noise MTA violation.

PO Hoe (BR 08) stated that he and PO Cheung were at the end of the train car when they heard § 87(2)(b) playing music loudly on the opposite end of the train car. PO Hoe did not see § 87(2)(b) holding a speaker but believed that § 87(2)(b) had to be playing the music on a speaker due to the loudness of the music. POs Hoe and Cheung then approached § 87(2)(b) with PO Cheung telling § 87(2)(b) that he needed to turn down his music. § 87(2)(b) responded by telling PO Cheung, “Fuck you, I’m not lowering it down.” PO Hoe and Cheung then asked § 87(2)(b) to exit the train upon arrival at 14th Street Union Square station.

When the cell-phone video provided by § 87(2)(b) begins (BR 03), the officers are already speaking with § 87(2)(b) and appear to have already instructed him to get off the train.

Footage from PO Cheung’s BWC (BR 11), at 0:53, shows PO Cheung beside the train doors, gesturing with his hand for § 87(2)(b) to come towards him off the train. At timestamp 1:03, PO Cheung tells § 87(2)(b) “Step off the train, I’m not going to ask you again.” § 87(2)(b) then responds by yelling, “For What!?” PO Cheung then tells § 87(2)(b) “For playing loud music.” § 87(2)(b) then responds, “I turned it off!” At the time that the audio in the BWC footage begins, no music is playing.

MTA Rules of Conduct 1050.6(c)(4) (BR 19) states that no activity is permitted in the subway system which creates or emits sound in excess of 85 decibels five feet from the source of the sound and any such sound is considered excessive noise. Furthermore, use of amplification devices of any kind is prohibited.

It is undisputed that § 87(2)(b) was playing music on his phone when POs Hoe and Cheung, who were standing on the opposite end of the train car, approached him and questioned him about the music. While § 87(2)(b) who was approximately six to seven feet from § 87(2)(b) stated that § 87(2)(b) was playing the music “quietly,” POs Hoe and Cheung, who were, as per both § 87(2)(b) and the officers, standing on the opposite end of the train car, stated that they could hear the music being played by § 87(2)(b) and that this was the reason they approached § 87(2)(b). The investigation credited that, if the music being played by § 87(2)(b) was loud enough that officers standing on the opposite end of an MTA subway car could

hear it, § 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Dennis Hoe used physical force against § 87(2)(b)

§ 87(2)(b) (BR 02) stated that as § 87(2)(b) was being escorted out of the train by POs Hoe and Cheung, PO Hoe pushed § 87(2)(b) as he exited the train doors.

Cell phone footage submitted by § 87(2)(b) (BR 03) shows at timestamp 00:12, officers tell § 87(2)(b) to get off the train. PO Hoe then appears to make contact with § 87(2)(b). It then appears that § 87(2)(b) moves his arm and turns toward PO Hoe while saying, “Don’t touch me.” At 0:16, § 87(2)(b) appears to push § 87(2)(b) though view of the contact is blocked by PO Hoe’s body. § 87(2)(b) barely moves forward in reaction to the contact by § 87(2)(b). Timestamp 0:17 shows § 87(2)(b) being escorted off the train by PO Hoe. At timestamp 0:18, PO Hoe’s body appears to move forward in a quick jerking motion.

Footage from the BWC of PO Hoe (BR 12) shows at timestamp 1:07, PO Cheung asking § 87(2)(b) to step off the train, to which he does not comply. POs Cheung and Hoe continue to ask § 87(2)(b) multiple times to get off the train, but he continues to remain on the train while continuously using profanities towards the officers. At timestamp 1:37, PO Hoe grabs the right bicep of § 87(2)(b) with both hands as he begins reading the shield number of PO Cheung. As PO Cheung grabs § 87(2)(b) he tells § 87(2)(b) to step off the train. § 87(2)(b) then pulls his arm away from PO Hoe and tells PO Hoe not to touch him. At 1:40, § 87(2)(b) appears to nudge § 87(2)(b) twice, though it does not cause him to move. At 1:41, PO Hoe once again grabs the arm of § 87(2)(b) who has still not exited the train. PO Hoe then begins to guide § 87(2)(b) off the train while holding his bicep, and as § 87(2)(b) gets off the train, he pulls away from PO Hoe and backs away, telling the officers not to touch him.

Footage from the BWC of PO Cheung (BR 11) shows at timestamp 2:32, as PO Cheung has § 87(2)(b) bicep, § 87(2)(b) pulls away from PO Hoe and spins around out of the train. As § 87(2)(b) spins away, PO Hoe’s fingertips make contact with § 87(2)(b) upper right chest, but it is not with enough force to impact § 87(2)(b) movement as he backs away from the officers.

PO Hoe (BR 08) stated that he and PO Cheung asked § 87(2)(b) to exit the train, but he refused to comply. After § 87(2)(b) refused a second order to exit the train, PO Hoe touched § 87(2)(b) on his upper bicep in an attempt to escort him from the train.

Patrol Guide Procedures 221-01 (BR 35) and states that any application or use of force must be reasonable under the circumstances.

Patrol Guide Procedure 221-02 (BR 21) describes passive resistance as the minimal physical action preventing an officer from performing their lawful duty. Officers may apply no more force than necessary to gain control.

While no footage corroborates with § 87(2)(b) allegation that PO Hoe pushed § 87(2)(b) as he was getting off the train, PO Hoe did make physical contact with § 87(2)(b) when he grabbed his bicep. This physical contact, however, was due to § 87(2)(b) constantly refusing

to exit the train when asked by the officers to do so. § 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Dennis Hoe threatened § 87(2)(b) with the use of force.

Allegation (E) Abuse of Authority: Police Officer Max Cheung threatened § 87(2)(b) with the use of force.

§ 87(2)(b) (BR 02) stated that POs Hoe and Cheung told § 87(2)(b) multiple times to get off the train and that if he did not, they would make him get off the train. As § 87(2)(b) began to exit the train, he read off the names and shield numbers of both officers, ending each statement with, “dickmuncher.” While walking off the train, PO Hoe grabbed § 87(2)(b) arm, to which § 87(2)(b) then responded by telling the officers not to touch him. The officers then escorted § 87(2)(b) off the train and towards the edge of the platform on the opposing side. POs Hoe and Cheung then told § 87(2)(b) to take off his backpack, which he did. The officers then pointed their tasers at him. The officer kept their tasers pointed at § 87(2)(b) until PO Hoe began to place § 87(2)(b) in handcuffs.

In the cell phone footage submitted by § 87(2)(b) (BR 03), at 0:17, as § 87(2)(b) is being escorted off the train, he tells officers, “I’ll fuck both of y’all niggas up.” At timestamp 0:30, while § 87(2)(b) and the officers are on the platform, PO Cheung points his taser at § 87(2)(b) with the sight light pointed at his chest after § 87(2)(b) places a red drawstring bag on the ground. PO Cheung keeps his taser pointed at § 87(2)(b) until PO Hoe handcuffs him at timestamp 1:10. There is no angle that captures PO Hoe pointing his taser at § 87(2)(b) however at timestamp 0:43, PO Hoe’s taser is out of its holster and in his left hand, pointed at the ground.

Footage from PO Cheung’s BWC (BR 11), at timestamp 2:27, shows PO Hoe lightly grabbing § 87(2)(b) lower right bicep to attempt to escort him off the train. As he does so, § 87(2)(b) jerks his right arm away and tells PO Hoe, “Don’t touch me my nigga!” and then tells both officers, “I’ll fuck both of y’all niggas up.” At 2:33, § 87(2)(b) spins away from both officers with his back facing the opposing platform and begins to back away from the officers as he tells them not to touch him. § 87(2)(b) right hand appears to be clenched as he continues to back away from officers and continuously tells them not to touch him. At timestamp 2:40, § 87(2)(b) lowers the large red drawstring bag in his hand on the ground as he stops near the edge of the platform. At timestamp 2:43, § 87(2)(b) begins to take off his bookbag as PO Cheung points his taser at § 87(2)(b) chest with the sight light visible. PO Hoe can be seen with his taser out of its holster at timestamp 2:48, pointed to the ground. PO Cheung instructs § 87(2)(b) to put his hands up and he does so. PO Hoe then tells him to turn around. § 87(2)(b) refuses at first and asks the officers, “For what!?” At 3:01, PO Hoe attempts to place handcuffs on § 87(2)(b) left hand, but § 87(2)(b) shakes it off. PO Cheung continues to have his taser pointed at § 87(2)(b) At timestamp 3:02, PO Hoe briefly points his taser at § 87(2)(b) thigh. § 87(2)(b) then asks the officers, “Why are you going to tase me?” At timestamp 3:10, PO Hoe places § 87(2)(b) in handcuffs.

PO Cheung (BR 09) stated that § 87(2)(b) continuously refused to leave the train when asked to do so. When PO Hoe attempted to assist in escorting § 87(2)(b) off the train, § 87(2)(b) “brushed off” PO Hoe by swinging his arm away and told him not to touch him. § 87(2)(b) then told the officers he would “fuck both of y’all niggas up,” which PO Cheung took as § 87(2)(b) meaning he had the intentions to fight the officers. Upon walking towards the edge of the platform, § 87(2)(b) threw his bag to the floor and told the officers they would have to take him. § 87(2)(b)

§ 87(2)(b) then positioned himself in a manner that PO Cheung interpreted as an “aggressive stance” that indicated to him that § 87(2)(b) intended to fight. It was at this moment that PO Cheung took his taser out and pointed it at § 87(2)(b) in order to de-escalate the situation. PO Cheung believed that due to the buildup of circumstances since the beginning of the encounter, he was unsure what § 87(2)(b) would do next after having free hands upon dropping his bag. § 87(2)(b) then asked PO Cheung, “Are you going to tase me?” to which PO Cheung responded that he would tase him if § 87(2)(b) did not comply.

PO Hoe (BR 08) stated that after § 87(2)(b) refused a second order to exit the train, he touched § 87(2)(b) on his upper bicep in an attempt to escort § 87(2)(b) from the train., however § 87(2)(b) withdrew his hand and told PO Hoe not to touch him. § 87(2)(b) then told the officers, “I’ll fuck both of y’all niggas up,” which PO Hoe took as an indication that § 87(2)(b) intended to fight the officers. Once § 87(2)(b) exited the train, PO Cheung pointed his taser at § 87(2)(b) though PO Hoe could not remember the exact moment PO Cheung took out his taser. § 87(2)(b) then flexed his body and arms as if he wanted to fight the officers, to which PO Hoe responded to by taking out his taser in order to deescalate the situation.

NYPD Patrol Guide Procedure 221-08 (BR 15) states that a Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. Active aggression is considered a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. It further notes that officers may utilize the threat of utilizing the CEW, via a Laser Warning or a Warning Arc, to “attempt to achieve voluntary compliance.”

It is undisputed that upon being escorted out of the train, § 87(2)(b) told both officers he would, “fuck both of y’all niggas up.” After making this statement, § 87(2)(b) backed away from officers towards the edge of the train platform, a dangerous and perilous area, with a clenched fist, and then placed the bag in his other hand on the ground. As § 87(2)(b) was continuously refusing to comply with the commands of the officers from the beginning of their interaction and indicated to officers that he would refuse to let them touch him and would cause them harm, § 87(2)(g)

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Allegation (F) Force: Police Officer Max Cheung used physical force against § 87(2)(b)

§ 87(2)(b) (BR 02) stated that as POs Cheung and Hoe had their tasers pointed at § 87(2)(b) § 87(2)(b) passed by PO Cheung. As she passed by, PO Cheung turned around, told § 87(2)(b) to back up, and then pushed her to the ground with his right arm.

As the cell phone footage submitted by § 87(2)(b) (BR 03) begins, POs Hoe and Cheung are speaking to § 87(2)(b) on the train as a short, barefoot, apparently elderly female, identified by the investigation as § 87(2)(b) stands unsteadily on her feet nearby. She appears to be speaking to the officers and § 87(2)(b) all of whom appear to largely ignore her. As the officers and § 87(2)(b) exit the train car, § 87(2)(b) follows them out onto the platform. At timestamp 0:30, PO Cheung has his taser pointed at § 87(2)(b) and § 87(2)(b) can be seen walking

towards PO Cheung. § 87(2)(b) who was waving her right hand, walks behind PO Cheung. PO Cheung turns around and looks at § 87(2)(b) and tells her to back off before pushing her shoulder with his right arm. The push propels § 87(2)(b) and causes her to fall to the ground several feet away. § 87(2)(b) remains on the ground until timestamp 1:19, when she is picked up by PO Cheung.

Footage from PO Hoe's BWC (**BR 12**) shows, at timestamp 1:56, § 87(2)(b) walking up to PO Cheung as his taser is pointed at § 87(2)(b) and lightly touching him on his back. PO Cheung then turns his head to glance at § 87(2)(b) before immediately turning around and yelling at § 87(2)(b) to "back off!" before fully extending his right arm and pushing § 87(2)(b) shoulder, causing her to fall onto floor of the platform. PO Cheung then immediately turns his attention back to § 87(2)(b).

PO Cheung (**BR 09**) stated that during his initial interaction with § 87(2)(b) on the train, he observed § 87(2)(b). While he was speaking to § 87(2)(b) and asking him to get off the train, § 87(2)(b) tapped PO Cheung on the shoulder with a slipper. PO Cheung observed that she was laughing as she did so and ignored her. Later in the incident, as PO Cheung had his taser pointed at § 87(2)(b) on the platform, he felt an individual approaching him from behind and lightly hit him in the middle of his back. PO Cheung told the individual to back off and pushed them, which caused them to fall to the floor, at which point he realized that the individual was § 87(2)(b). PO Cheung was not aware that the person who touched his back was § 87(2)(b) until after he pushed her. PO Cheung explained that he pushed § 87(2)(b) for safety reason as, since his taser was pointed at § 87(2)(b) at the time. The push of § 87(2)(b) was meant to get her away from him and he did not intend or expect her to fall to the ground.

PO Hoe (**BR 08**) stated that as PO Cheung had his taser pointed at § 87(2)(b) § 87(2)(b) walked off the train and hit PO Cheung on the shoulder, though he could not estimate the level of force § 87(2)(b) used. PO Cheung responded to this contact by extending his arm out straight and making contact with § 87(2)(b) causing her to fall backwards onto the floor. PO Hoe considered § 87(2)(b) to be a threat when she touched PO Cheung, however she did not appear to be a threat any time before or after this contact with PO Cheung.

Threat, Resistance, and Injury (TRI) Report # § 87(2)(b) (**BR 06**) states that, while PO Cheung was placing an individual under arrest, § 87(2)(b) physically harassed him by slapping him on his back with the palm of her hand. In fear for his safety, PO Cheung "did push/strike" § 87(2)(b) away to keep his distance and § 87(2)(b) fell to the ground. It identifies § 87(2)(b) as 5'0" tall, 140-pound 67-year-old female and states that she appeared to be under the influence of alcohol.

Patrol Guide Procedures 221-01 (BR 35) and Patrol Guide Procedure 221-02 (BR 21) state officers may use force when it is reasonable to ensure officers' or civilians' safety. Officers' use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject's voluntary compliance, must be prioritized. Officers shall "apply no more than the reasonable force necessary to gain control," and excessive force is not tolerated. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject; members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject's violent history if known; presence of hostile crowd or agitators; and whether the subject is

apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence. Furthermore, an officer should assess the situation continually and adjust the use of force as necessary.

While video footage shows that § 87(2)(b) approached PO Cheung from behind and made physical contact with him while he had his Taser pointed at § 87(2)(b) and that she had generally been a nuisance during their interaction with § 87(2)(b) PO Cheung's response to § 87(2)(b) touch § 87(2)(g) PO Cheung himself acknowledged that § 87(2)(b) touch was light, and video footage from multiple angles shows that § 87(2)(b) touch was minimal and appeared to be in an attempt to get PO Cheung's attention, rather than an attempt to use force against or harm PO Cheung. While PO Cheung stated that he did not know that it was § 87(2)(b) behind him at the time he pushed her, the video footage shows that after § 87(2)(b) touched PO Cheung, he glanced at § 87(2)(b) by turning his head, and instructed her to back up, before fully turning his body and pushing § 87(2)(b) to the ground while looking at her. Furthermore, § 87(2)(b) had been present for and interjecting into the incident from the time the officers and § 87(2)(b) were on the train and, as per PO Cheung, had previously made similar non-threatening contact with him.

§ 87(2)(g)

Allegation (G) Abuse of Authority: PO Max Cheung stopped § 87(2)(b)

Allegation (H) Abuse of Authority: PO Dennis Hoe issued an unlawful summons to § 87(2)(b)

Summons § 87(2)(b) (BR 05), written by PO Hoe and issued to § 87(2)(b) for disorderly conduct, states in the narrative that § 87(2)(b) was observed to, with intent to cause disruption, act in a violent and threatening manner towards an unspecified individual and that her actions caused a crowd to gather. The summons makes no mention of § 87(2)(b) spitting.

TRI# § 87(2)(b) (BR 06) states in the narrative that § 87(2)(b) became verbally combative, causing public alarm and thus causing a crowd to gather within the train platform. § 87(2)(b) then proceeded to spit at PO Cheung causing annoyance and alarm to PO Cheung. § 87(2)(b) was then placed in handcuffs and transported to Transit District 4 Stationhouse.

PO Cheung (BR 09) stated that § 87(2)(b) was taken to the stationhouse because he needed her identification in order to prepare the TRI worksheet for the force he used on § 87(2)(b) § 87(2)(b) was not considered under arrest at the time he escorted her to the Transit District 4 stationhouse; however, PO Cheung could not articulate whether § 87(2)(b) was free to leave at that point in the incident. When PO Cheung asked § 87(2)(b) for her identification, she spit at

him. It was at this point that he placed § 87(2)(b) under arrest for disorderly conduct. There were two officers with PO Cheung at this point and no public crowd formed. § 87(2)(b) was ultimately released from the stationhouse with a summons for disorderly conduct issued by PO Hoe

When shown the summons issued to § 87(2)(b) and asked about the crowd that the summons stated was caused by § 87(2)(b) behavior, PO Cheung stated the crowd was the people who were recording on the train and some individuals recording on the platform. PO Cheung further stated that his pushing of § 87(2)(b) caused a crowd of approximately five people to gather on the platform and that he was unable to conduct an investigation with a crowd gathered.

PO Hoe (**BR 08**) stated that § 87(2)(b) was taken to the Transit District 4 stationhouse due to her “disorderly” behavior of touching PO Cheung. PO Hoe explained that he heard a lot of noises and that a crowd began to form approximately five to ten feet away in response to PO Cheung making contact with § 87(2)(b) and causing her to fall to the ground. In regard to the location of the crowd, some of the civilians were already on the platform and some were from the train. § 87(2)(b) touching of PO Cheung was the “violent and threatening action” that PO Hoe described on the summons.

Footage from the cell phone video (**BR 03**) and from POs Hoe and Cheung’s BWCs (**BR 11, 12**) show no new crowd forming *after* § 87(2)(b) is pushed by the PO Cheung. The people who are present on the train and on the platform were already present and observing the officers’ interaction with § 87(2)(b) and remained in their locations when PO Cheung pushed § 87(2)(b) to the floor. While § 87(2)(b) and the voices of the individuals on the train can be heard verbally protesting the push of § 87(2)(b) everyone largely remains where they are and none of the individuals observing approach § 87(2)(b) or the officers as a result.

Footage from PO Cheung’s BWC (**BR 11**) shows, at timestamp 3:31, PO Cheung approaching § 87(2)(b) as she is on the ground and telling her, “You come here too, you come here too. Let’s go. Get up.” PO Cheung then picks § 87(2)(b) off the floor and begins to escort her to the stairs. When they reach the stairs, § 87(2)(b) grabs the rail of the stairs, sits down, and tells PO Cheung, “No.” PO Cheung firmly tells § 87(2)(b) “Yo get up. Put your pants up and go up.” § 87(2)(b) says, “What? What did I...what did I...” Three officers come down the stairs and PO Cheung tells them that everything is under control. As § 87(2)(b) is being taken up the stairs by PO Hoe, PO Cheung tells the other officers, “She’s another one.” PO Cheung yells at § 87(2)(b) “Come on. Let’s go. Go upstairs! Let’s go! Go upstairs! I ain’t playing with you! You thought it was funny right?” § 87(2)(b) responds, “What?” PO Cheung tells § 87(2)(b) “Stand up and get upstairs, or I’ll make you get upstairs!” As PO Cheung escorts § 87(2)(b) up the stairs with another officer, PO Cheung tells the officer, “We’re going to bring her to TD 4” the other officer looks at PO Cheung and asks him, “What? Under?” At timestamp 6:17, PO Cheung appears to be speaking on the radio and asks, “You want me to just EDP her?” At timestamp 6:31, PO Cheung asks § 87(2)(b) for her name. The other two officers present also ask her for her name, to which § 87(2)(b) tells one of the other officers her name. PO Cheung then asks for identification, and the officers are able to find § 87(2)(b) information on a hospital band on her wrist. Due to the fact that § 87(2)(b) face is redacted in the BWC footage, it cannot be seen whether she spits at this or any other point in the video. At timestamp 9:28, PO Cheung approaches an officer and tells him, “I need a discon. So I was trying to and she grabbed me, right? Shoved her to the floor.” At timestamp 9:46, PO Cheung is at the front of the stationhouse with three other officers as two of them hold § 87(2)(b) PO Cheung tells one of the officers, “I’m gonna discon this one” while pointing to § 87(2)(b) At timestamp 9:54, PO Cheung begins placing § 87(2)(b) in handcuffs. At timestamp 10:17 PO Cheung points at § 87(2)(b) and tells another officer, “Female under.”

In People v DeBour, 40 N.Y.2d 210 (1976) (BR 20), the court ruled that if an officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a crime, that officer is authorized to conduct a forcible stop and detention of that person, which the court defined as a “significant interruption with an individual’s liberty of movement.”

New York Penal Law 240.20 (BR 26) states that a person is guilty of disorderly conduct when with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk if they engage in violent, tumultuous, or threatening behavior. Disorderly conduct is a violation.

People v Baker, 20 N.Y.3d 354 (2013) (BR 28) determined that the presence of an intent to cause public harm is critical to the charge of disorderly conduct, and that conduct must be of a public rather than an individual dimension. Factors considered in making that finding include the time, place, nature and character of the conduct, and the number of people in the vicinity and whether they are drawn to the disturbance. Statements or actions that are directed exclusively at a PO, who is trained to defuse situations involving angry or emotionally distraught persons, undermines any inference that there is a threat of public harm.

New York Penal Law 195.05 (BR 37) A person is guilty of obstructing governmental administration when they intentionally attempt to prevent a public servant from performing an official function, by means of intimidation, physical force or interference.

NYPD Patrol Guide Procedure 221-03 (BR 27) states that when an officer uses any level of reportable force the officer must notify an immediate supervisor regarding type of force used, and the reason force was used, as well as document any use of force and/or injury. The immediate supervisor must then direct the officer involved to complete their Threat, Resistance or Injury (TRI) Interaction Report.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
PO Hoe and PO Cheung provided differing reasons for why § 87(2)(b) was grabbed on the platform and taken upstairs after she was pushed to the ground by PO Cheung. Furthermore, while POs Cheung and Hoe both accuse § 87(2)(b) of committing “disorderly conduct,” they provided differing accounts as to where, when, and how she committed this alleged crime. § 87(2)(g)
§ 87(2)(g)

§ 87(2)(b) PO Hoe stated that § 87(2)(b) was taken upstairs to the Transit District 4 stationhouse due to her “disorderly” behavior of touching PO Cheung, which caused a crowd to form. However, the cell phone footage and BWC footage show that the group of individuals who were observing the incident on the platform and in the train were present and observing the officers’ interactions with § 87(2)(b) prior to § 87(2)(b) touching PO Cheung. While the gathered individuals verbally protested PO Cheung’s push of § 87(2)(b) they remained in their relative locations and the size of the “crowd” does not change in response to any action taken by § 87(2)(b) § 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)
From the beginning of the incident, § 87(2)(b) constantly makes contact with § 87(2)(b) and then finally makes contact with PO Cheung while he is attempting to take § 87(2)(b) into custody. While the officers largely ignored § 87(2)(b) her actions still interfered with their attempts to get § 87(2)(b) off the train and then arrest him. § 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Cheung's basis for believing that § 87(2)(b) had committed disorderly conduct was that, once he stopped and took her upstairs, she spit on him outside the stationhouse. He stated that the only other individuals present when this occurred were two other officers and that no crowd of civilians formed as a result. An act of disorderly conduct must be public rather than individual in nature, and actions directed exclusively towards officers are not considered a threat to public harm. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party (**BR 29, 30, and 31**).
- PO Cheung has been a member of service for seven years and has been a subject in seven other CCRB complaints and fourteen other allegations, none of which were substantiated. § 87(2)(g)
- PO Hoe has been a member of service for seven years and has been a subject in seven other CCRB complaints and fourteen other allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[illegible]

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Investigator:	<u>Zim Sessoms</u> Signature	<u>Inv. Zim Sessoms</u> Print Title & Name	<u>12/01/23</u> Date
Squad Leader:	<u>Patrick Yu</u> Signature	<u>IM Patrick Yu</u> Print Title & Name	<u>12/01/2023</u> Date
Reviewer:	<u> </u> Signature	<u> </u> Print Title & Name	<u> </u> Date